

Protest of	)	Date: June 24, 1987
COMPUTER SYSTEMS & RESOURCES	)	
Solicitation No. 104230-86-B-0144	)	P.S. Protest No. 87-38

### DECISION

Computer Systems and Resources (CS&R) protests the award of contracts under Request for Proposals (RFP) 104230-86-B-0144. The protester questions the fairness of the evaluation of its technical proposal and the conduct of negotiations.

The RFP was issued by the Office of Contracts, Headquarters, on August 25, 1986, with an offer due date of September 23, extended to October 15, 1986, by Amendment A02. It sought proposals for Integrated Retail Terminal (IRT) systems for the automation of postal retail window operations. The RFP requested both technical and price proposals and provided in Section B - Evaluation and Award Factors that one award would be made to the offeror receiving the highest overall score composed of the sum of the indexed technical score multiplied by twenty and the indexed pricing score multiplied by eighty.<sup>1/</sup> Amendment A04, which was issued February 3, 1987, provided that the Postal Service reserved "the right to make more than one award if all acceptable offers received for the total quantities required are within Postal Service funding limitations...."

Three offerors submitted technical and pricing proposals -- CS&R, MOS Scale International (MOS) and Systems Development Corporation (SDC). The record indicates that all technical proposals were forwarded to the Delivery Services Department for technical review and evaluation. Discussions were then held with each offeror. The proposals of MOS and SDC were determined to be technically acceptable; the proposal of CS&R was rated as technically unacceptable. Contracts for the IRTs were awarded to MOS and SDC on April 15. CS&R's protest was received by this office on May 6, 1987.

In its protest, CS&R contends that the evaluation of its technical proposal was arbitrary and unreasonable. The protester also asserts that the Postal Service did not comply with its own procurement regulations, failed to comply with the Competition in

<sup>1/</sup>The index consisted of a ratio between the score of the most favorable technical or price offer and an offeror's technical and price score.

Contracting Act of 1984, improperly waived certain mandatory requirements for MOS and SDC, and knowingly misrepresented the status of CS&R's proposal with the intent to deceive CS&R.

The protester states that, prior to the issuance of the solicitation, the contracting officer suggested that it build a prototype in its lab and submit a proposal in response to the RFP. After responding to the contracting officer's October 30, 1986, request for clarification of its proposal, CS&R contends it heard nothing further about the status of its proposal. CS&R contends it repeatedly called and wrote to the contracting officer concerning the status of its proposal from about January until the date of award, April 15, 1987. According to CS&R, the contracting officer merely advised that the proposal was being reviewed. CS&R learned from its suppliers on or about March 24, 1987, that contracts were being awarded to MOS and SDC; the contracting officer told CS&R that this was simply rumor. On one occasion the contracting officer advised that the proposal was "not competitive."

The protester was told of the award and the rejection of its proposal on April 17, 1987, two days after award, when the contracting officer and two postal technical personnel visited its lab. CS&R states that it first received written notification of the awards on April 22.<sup>1/</sup> According to the contracting officer, written notice of rejection of CS&R's proposal was hand delivered to CS&R on April 17.

The contracting officer contends that the evaluation of the protester's proposal was fair and its rejection fully supported by the record. He states that the solicitation included functional specifications that the proposals of MOS and SDC met and that of CS&R did not. He denies telling CS&R to build an IRT in its lab and to submit a proposal in response to the RFP. He also denies the protester's allegations concerning any intent to mislead CS&R or to afford preferential treatment to the other two offerors.

The contracting officer also argues that the protest should be dismissed as untimely under Postal Contracting Manual (PCM) 2-407.8 (d)(3) since it was not received within ten working days after the information on which it was based was known to the protester.

The protester and its counsel submitted additional arguments in rebuttal to the contracting officer's report, and also participated in an oral protest conference with this office pursuant to PCM 2-407.8 f(6). Concerning timeliness, the protester, through its counsel, asserts that it advised the contracting officer orally at the April 17 meeting that "we are protesting the award" and that the contracting officer asked that it "wait two weeks" until his return from a scheduled trip to Europe. It contends this is sufficient notice of the protest under the circumstances. It states that it did not learn the reasons why its proposal was rejected until the debriefing on April 27, and that its protest was within ten working days after this date. We find the protest untimely. PCM 2-

<sup>2/</sup>The record reflects that the contracting officer wrote two letters to CS&R concerning the rejection of its proposal and the contract awards. The first, dated April 16, was apparently hand delivered to CS&R on April 17. This letter stated that CS&R's proposal had been found to be technically unacceptable. The second letter, dated April 20, was apparently the letter received by CS&R on April 22.

407.8(d)(3) provides:

[P]rotests must be received not later than 10 working days after the information on which they are based is known or should have been known, whichever is earlier; provided that no protest will be considered if received more than 15 working days after award of the contract in question.

The timeliness requirement imposed by this regulation is jurisdictional. We cannot consider the merits of any issue which has been untimely raised. Bessemer Products Corporation, P.S. Protest No. 86-5, March 26, 1986; POVECO, Inc., et al., P.S. Protest No. 85-43, October 30, 1985; Omnicon, Inc., P.S. Protest No. 84-24, June 25, 1984, aff'd on reconsideration, July 27, 1984; Southern California Copico, Inc., P.S. Protest No. 83-2, August 31, 1983. This office has no authority to waive or disregard untimeliness. See Air Transport Association of America, P.S. Protest No. 84-29, May 17, 1984, aff'd on reconsideration, June 1, 1984; James W. and Joan C. Carroll, P.S. Protest No. 82-13, August 27, 1982.

Here, it is undisputed that the contracting officer advised CS&R on April 17, 1987, that its proposal had been found to be technically unacceptable and that awards had been made. CS&R's protest was received on May 6, 1987, and is, therefore, untimely. CS&R's assertions that it did not have actual knowledge of the basis of the protest until the debriefing on April 27 is unavailing. A protester is "charged with knowledge of a basis for protest" when the contracting officer conveys to the protester a position adverse to the protester's interest. Brandon Applied Systems, Inc., Comp. Gen. Dec. B-188738, December 21, 1977, 77-2 CPD &486; Sun Electric Corporation, Comp. Gen. Dec. B-202325, August 10, 1981, 81-2 CPD &112 (interests of the protester must be directly threatened and the contracting officer must convey to the protester his intent to act on a position adverse to the protester's interest). A protester may not delay filing a protest until it is certain that it is in a position to detail all of the possible grounds or facts underlying its protest. Kappa Systems, Inc., Comp. Gen. Dec. B-187395, June 8, 1977, 77-1 CPD &412; Blue Cross - Blue Shield of Tennessee, Comp. Gen. Dec. B-210277, May 23, 1983, 83-1 CPD &555.

The fact that CS&R told the contracting officer on April 17 of its concerns or that it "was protesting" the award is not relevant. To be timely, a protest must be in writing and be received by this office or by the contracting officer within the prescribed time limits. See PCM 2-407.8 c.; Raymond H. Cash, P.S. Protest No. 77-52, December 8, 1977.

Even if CS&R did not receive written notification of the contract awards until April 22, oral notification of the basis of a protest is sufficient to start the time period running; a protester may not delay filing its protest until receipt of a written notification. See Evan Suppliers Co., Inc., P.S. Protest No. 84-42, June 21, 1984, citing FLS, Inc., Comp. Gen. Dec. B-212066, July 21, 1983, 83-2 CPD &109; A-Rentals, Inc., Comp. Gen. Dec. B-211326.2, May 31, 1983, 83-1, CPD &580; Illitron, Comp. Gen. Dec. B-192309, August 7, 1978, 78-2 CPD &100.

CS&R's contention that it was advised by the contracting officer to wait two weeks for his return from Europe must also fail. Bid protest regulations may not be waived by the actions or representations of a contracting officer. Rogers Helicopters, Inc., Comp.

Gen. Dec. B-218678, August 1, 1985, 85-2 CPD &115; Glatzer Industries Corp. --  
Reconsideration, Comp. Gen. Dec. B-209440.2, March 1, 1983, 83-1 CPD &211.

The protest is dismissed as untimely.

**[Signed "Norman DMenegat for"]**

William J. Jones  
Associate General Counsel  
Office of Contracts and Property Law

**[Compared to original 3/3/93 WJJ]**